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February 10, 2006

Department of Homeland Security
USCIS, Director, Regulatory Management Division
Clearance Office
111 Massachusetts Avenue, NW, 3rd Floor
Washington DC 20529

RE: USCIS: Agency Information Collection Activities, USCIS Form 1 [FR Doc. 05-24634]

Dear Sir or Madam:

The Catholic Legal Immigration Network, Inc. (CLINIC) respectfully submits the following comments to the 45-day notice of information collection referenced above and published in 70 FR 249 at 77171 on December 29, 2005.

CLINIC's Interest in the Proposed Action

CLINIC, a subsidiary of the United States Conference of Catholic Bishops (USCCB), is a legal support agency for the nation's largest and most productive network of charitable immigration programs. CLINIC currently supports 159 programs in 260 office locations across the country. These programs employ roughly 1,000 attorneys and BIA accredited representatives, who, in turn, represent more than 100,000 low-income immigrants each year. Of these low-income immigrants, a substantial number are the petitioners or beneficiaries of applications and petitions pending before the USCIS. Additionally, CLINIC's Division of Religious Immigration Services represents hundreds of foreign-born priests, sisters, seminarians, and laypersons each year. The division's current caseload includes more than 850 individual cases. As a result of its work, CLINIC has substantial experience with application and petition filing before USCIS. For the reasons set forth below, CLINIC urges USCIS to maintain the option of paper filing that does not necessitate the creation of an i-account prior to filing an application or petition with USCIS.

Comments on the Proposed Action

The USCIS Form 1 would capture irrelevant information and requests information not needed to process many USCIS applications and petitions.

The Privacy Act of 1974, Public Law 93-579, requires agencies to maintain in its records only the minimum amount of information "relevant and necessary" to accomplish its purposes. See 5 U.S.C. § 552a(e)(1). USCIS Form 1 requests information that is unnecessary or that would not need to be collected in order to process many USCIS applications and petitions. By collecting information that it does not need, USCIS would create a process that is unduly burdensome for many applicants and petitioners. We are

unaware of any other government agency that requires the completion of a 19-page form simply to open an account.

Additionally, some questions on USCIS Form 1 ask for information never before requested by USCIS. In Section 1.1, examples of such information include national I.D. numbers, a petitioner's or beneficiary's level of ability to read and speak English, whether or not a person holds a driver's license, and other specific data regarding drivers licenses.

Examples of information requested by USCIS Form 1 that is not required for or applicable to many USCIS applications and petitions are highlighted below.

Section 1

Section 1.1: Whether or not a person has a valid passport, the country that issued it, the passport number, and passport issuance and expiration dates

Section 1.1: Highest education and degree earned

Section 1.1: How well a person reads and speaks English

Neither USCIS Form 1 nor the instructions indicate whether the information in Section 1.1 is required to be provided by U.S. citizens or Lawful Permanent Residents who wish to file immigrant visa petitions for family members. USCIS does not need to know whether or not such a petitioner speaks and reads English well. Nor does it need to know a petitioner's highest level of education, or whether or not they hold a valid passport. This information has no bearing on whether or not a family-based immigrant visa petition would be approved. Requests for such information create a process that is unnecessarily lengthy and cumbersome. For many current lawful permanent residents and U.S. citizens, family-based immigrant visa petitions may be the only applications they will ever file with USCIS. Requesting information that is unnecessary to the adjudication of a benefit, and which would be stored electronically violates U.S.C. § 552a(e)(1).

Section 2

Section 2.2 Employment History

The level of detail requested in the employment history section (job duties, hours worked per week, taxpayer I.D. number, annual salary, etc.) is irrelevant to the majority of applications and petitions filed with USCIS. It exceeds the amount of information currently requested by the Form G-325A which petitioners and their spouse beneficiaries must file with an I-130 immigrant visa petition. No employment history information is required for many applications including but not limited to the I-765, I-102, I-90, I-360, I-730, I-131, and many more. This information should not be requested unless it is required for a specific benefit. Once a petition or application requesting this type of information is completed, that information could be linked to the i-account.

Sections 3 and 4

Section 3.4: Residence during the past five years

Section 4.1 and 4.2: Information regarding marriages

Section 4.3: Information about an applicant's children

Section 4.4: Information about an applicant's parents

USCIS Form 1 requires all persons to complete section 3.4, by providing their residence during the past five years. Sections 4.1 and 4.2 require individuals to provide information about their marriages. Requiring this information of all individuals filing petitions or applications with USCIS is unnecessary. Individuals who are already lawful permanent residents, but who wish only to obtain a travel document or advance parole document would normally not be required to provide such information. In addition, individuals with temporary protected status who are filing for extensions of their employment authorization would not be required to provide such information. Asylees seeking a travel document would not need to provide such information, nor would non-immigrants applying for extensions of stay or change in status. These examples are only a few of the many types of applicants who would not normally be required to provide such information.

Similarly, section 4.3 requires information about an applicant's children. Section 4.4 requires information about an applicant's parents. The information requested requires detailed and lengthy responses and is not necessary for many applications and petitions filed with USCIS, such as the I-131, I-765, I-90, I-821, I-102, and many others.

The examples above are provided to illustrate that the USCIS Form 1 requests information that many USCIS petitions and applications do not require. Forcing an individual who only seeks to file one or two applications with USCIS to complete a 19-page form prior to doing so is onerous and inefficient.

USCIS Form 1 is unnecessarily lengthy and will be extremely time-consuming to complete.

The Federal Register notice provides a 90-minute timeframe for completion of the form. The instructions for USCIS Form 1 indicate a 40 minute timeframe. For those who speak English as a second language, it will take far longer than 90 minutes to complete this form.

USCIS Form 1 is an inefficient data gathering process.

USCIS Form 1 requires information that USCIS may never need from applicants. The information the form seeks out will only be fully relevant to a portion of the cases ultimately. Front-loading the collection of data is inefficient; there is no compelling immigration rationale for the initial form having 19 pages of extensive questioning. It only burdens the applicants and unnecessarily extends the initial application steps.

Moreover, much of the information requested by USCIS Form 1 can change within a very brief period of time. This will add confusion since applicants will instinctively seek to update information relating to the extensive Form. For example, clients may frequently move, change jobs, have additional children, change marital status, improve their level of English, obtain a new drivers license, etc – all of which pertain to information given on Form 1.

By requiring a wide range of information through Form 1 prior to the submission of one discrete USCIS application (for example, an I-821 application for Temporary Protected Status), USCIS will be gathering information that might only be needed at later stages; or not needed at all. Also, much of this information would need to be changed and updated if the same TPS applicant later became the beneficiary of a family or employment based visa petition, or applied for adjustment of status or naturalization.

At the initial level of application, requesting such a broad array of information is neither relevant nor necessary.

U.S. citizen or lawful permanent resident petitioners should not be required to have biometrics taken or pay the \$100 fee for opening an i-account, of which \$70 is for biometrics.

Neither USCIS Form 1 nor the instructions clarify that U.S. citizens or lawful permanent residents petitioning for relatives need not complete or pay additional biometric fees. Neither U.S. citizens nor lawful permanent residents are required to be fingerprinted when filing an immigrant visa petition for a family member. The USCIS Form 1 and instructions must clearly explain that U.S. citizens and lawful permanent residents opening i-accounts in order to file family-based immigrant visa petitions are not required to have biometrics taken. The fee for such individuals who open an i-account should not be \$100, but rather only \$30 as they are not required to be fingerprinted or pay the \$70 biometrics fee.

Additionally, there is no clear benefit to an applicant having biometrics completed at the time an i-account is opened. Currently, fingerprint checks expire after 15-months and have to be re-run. As a result, anyone applying for a benefit more than 15-months later would have to wait for another biometric check and would not save any time.

Requests for information related to complex issues such as criminal convictions will create confusion and could create unintentional inconsistencies in information provided to USCIS.

Section 3.2 asks complicated questions about criminal convictions, arrests, and sentencing information. An individual without a comprehensive understanding of the legal system will not be able to provide the information requested. Terms such as docket number, disposition, expunged, imposed, diversion, and deferred or withheld adjudication are terms familiar to a select population consisting mainly of legal professionals. Assistance will be required of persons familiar with criminal conviction and arrest documents in order to ensure that errors are not made in completing this section. Requesting individuals to provide complicated information electronically will result in honest errors. Inconsistencies resulting from honest mistakes could be used against the client or could result in unfair denials of benefits. The instructions for USCIS Form 1 must specify how mistakes can be corrected after initial submission of USCIS Form 1.

Moreover, lawful permanent residents who file immigrant visa petitions for their family members are not required to provide such information via the existing application process, and should not be required to do so under this new process.

USCIS Form 1 instructions are contradictory and require more clarification.

On page 9 of the USCIS Form 1 instructions, USCIS must indicate the other government agencies with whom information will be shared.

Page 1 of USCIS Form 1 instructions states that persons who have been arrested or convicted of a crime will need to submit certified disposition records. This statement is confusing and not applicable to all i-account holders. For example, U.S. citizens who may

have to open an i-account in order to file an I-130 immigrant visa petition for a family member do not have to provide criminal background information.

Page 2 of USCIS Form 1 instructions states, “If you open your account on our website, you can immediately file applications. If you open your account by mail, you can mail applications for benefits along with your Form 1 to open an i-account.” This indicates that a paper filing option remains available, which CLINIC strongly supports.

However, these instructions are contradicted just several paragraphs later on the same page. The instructions on page 2 of USCIS Form 1 under the section entitled “Opening an i-account” state, “If you are in the U.S. you must open your i-account on our website, and then similarly e-file any application.” The instructions must be more clearly stated to reflect the continued existence of a paper filing option.

CLINIC strongly urges USCIS to maintain a paper filing option and to change the instructions on USCIS Form 1 to reflect the continued availability of the paper filing option, as well as the option not to open an i-account.

Part 5 of USCIS Form 1 instructions make repeated references to an applicant or preparer’s need to “sign” the application. Section 5.3 clarifies that a signature can be made by reading a certification, typing in a name, and dating the application. This clarification should appear at the beginning of Part 5 in order to alleviate confusion surrounding how an application is to be “signed” electronically.

An electronic filing process without the possibility of paper filings creates significant access issues and barriers to attaining USCIS benefits.

USCIS officials have informed CLINIC that they would like to eliminate paper filings and move solely to an electronic filing process. CLINIC is strongly opposed to the elimination of a paper application and petition filing option.

CLINIC believes that an **option** to create on-line accounts to manage immigration transactions would benefit USCIS and applicants with the capacity to file electronic applications. However, we believe that **requiring** applicants to create such accounts and to submit applications and petitions electronically is overly burdensome and will exclude many individuals, specifically low-income applicants or those without computer skills, from accessing the USCIS application and petition process. By imposing requirements that would block certain populations from the application process, USCIS would unfairly prejudice them.

In addition, we oppose any system that would result in faster processing for those applications filed electronically, as this would create another “premium processing fee” like the option businesses currently have. Those who file by paper should not be penalized with slower processing; rather all applicants should benefit equally from the efficiencies gained by USCIS through i-accounts and e-filing.

The electronic-only process prejudices clients without technology skills or the financial means to access computers and the internet.

The CLINIC network serves low-income immigrants. Many of its clients are unfamiliar with computer technology. An electronic-only process forces individuals with limited or

no computer skills or access to pay an individual or organization solely for these purposes. Many do not have the financial resources to purchase or access a computer or the internet on a regular basis. Access to computers in libraries and community centers is time-limited and would not be sufficient for a 90-minute form completion process. Requiring all USCIS customers to create and maintain electronic accounts and file all applications and petitions electronically excludes low-income individuals or those without certain technology skills from accessing benefits and services to which they are legally entitled.

An electronic only process could result in predatory businesses that take advantage of low-income or technologically inexperienced immigrants.

Sufficient public access to computers with internet services and scanners, located in spaces affording the level of privacy needed to complete a 19-page form does not exist. By eliminating the current paper filing option, USCIS would create an incentive for unscrupulous individuals to charge unnecessary or inflated fees to individuals who do not have access to the necessary technology to create i-accounts and to submit applications and petitions. Such individuals or intermediaries often lack a complete understanding of the immigration process, let alone the specific forms that must be filed in a particular case. Unscrupulous individuals unlicensed to practice law could frequently take advantage of and provide incorrect information about the creation of such accounts and the filing of applications and petitions to applicants without resources. In addition, these businesses would provide advice on how to complete the forms, which would constitute the unauthorized practice of immigration law. Some states have passed specific laws to combat the unauthorized practice of immigration law. The growth of a new electronic account for-profit industry would undermine these laws.

An electronic-only process will exclude similarly situated beneficiaries of family-based immigrant and other petitions residing overseas, especially those in rural or developing areas.

The instructions on USCIS Form 1 indicate that overseas beneficiaries must create i-accounts. Access to computers and the internet would be impossible for beneficiaries residing in small rural villages in developing countries. Beneficiaries of asylee or refugee petitions who are displaced or who reside in refugee camps do not have the means to create i-accounts. This requirement would be discriminatory as it would preclude such individuals from obtaining visas to the United States.

Restricting filing to an electronic system would require expensive equipment and complicated credit or debit transactions.

USCIS Form 1 would require the scanning of many documents. This would increase the technological burden for clients and legal representatives. Scanning is a time-consuming process. In addition, many charitable legal service providers do not have scanners because they are expensive. For offices that do have such equipment, it is almost always limited to one scanner, which would be inadequate to serve an entire office.

Many clients served by charitable immigration programs do not have credit or debit cards. In order to serve such clients, charitable offices would need to maintain a bank account or obtain a credit card so that they could assist clients to file forms and pay the fees electronically for them. This would require the legal service provider to collect from

clients the money to be used for USCIS payments and deposit it so that it could be used to make a debit transaction or pay a credit card bill. It would require that all charitable legal programs establish an Interest on Lawyers' Trust Account (IOLTA) to manage such transactions.

Technology glitches will unfairly prejudice customers who are not at fault.

All electronic systems have flaws, which cause a variety of complications. In a completely electronic process, customers are unable to leave a "paper trail." In many cases, such a trail is vital to an applicant's ability to prove error on the part of USCIS, or to substantiate a motion to re-open or appeal. Electronic filing will greatly diminish the ability to appeal erroneous decisions based on a USCIS assertion of an untimely filing, as there would be less paper to establish the credibility of a motion disputing this type of claim. Many times an individual's only defense consists of the proof of having filed important USCIS correspondence provided by the U.S. postal system through certified mailings.

When an applicant is prevented from timely submitting an application due to technological failure, USCIS must make generous exceptions. Good faith efforts to file electronically should be honored. There are no comparable legal processes that subject individuals to strict deadlines without offering paper filing options. To eliminate a paper filing option without a policy that generously excuses late filings, (which were delayed due to technological problems), is unfair.

An option to save and update USCIS Form 1 prior to completion and submission to USCIS must exist.

USCIS Form 1 does not indicate whether or not the completed form could be electronically saved prior to official submission to USCIS. Such an option is necessary and should be explained in the USCIS Form 1 instructions. Due to the enormous amount of information required by USCIS Form 1, it is likely that clients or customers will not have all the information available to them when they initially attempt to complete the form. An option to save the form prior to filing it with USCIS is necessary in order to avoid having to re-start this timely and very lengthy process if a piece of information is lacking at the time a person attempts to complete the form.

In addition, many practitioners like to complete the forms, take a break from them, and then return to the forms to review them for errors. This process catches many inadvertent errors prior to the filing with USCIS, thereby increasing efficiency. The option to save forms, including USCIS Form 1 prior to submitting it to USCIS, is necessary in order to facilitate this process and reduce the number of errors.

Printing form USCIS 1 prior to submission.

The instructions for USCIS Form 1 do not indicate whether or not the form could be printed in its entirety prior to submitting it electronically to USCIS. Copies of such forms are needed for the paper files maintained by all legal service providers.

The resources of charitable legal service providers will be diverted away from assisting clients with legal representation in order to assist them to complete USCIS Form 1.

CLINIC's network of charitable legal service providers does not possess the capacity needed to complete the USCIS Form 1 for all of its existing clients. Under the proposed system, completion of the USCIS Form 1 for anyone seeking assistance with a simple application, such as an I-821, I-765, I-90, I-131, etc. would also require assistance with a 19-page registration form. The additional time and resources required to assist clients with USCIS Form 1 would require increased fees and result in fewer clients served. Clients that could not be served would risk falling prey to fraudulent immigration practitioners who open businesses that take advantage of individuals desperate for assistance. Finally, efficient service models developed by our network would be rendered obsolete, such as naturalization group processing workshops and group processing of refugee adjustment applications.

Conclusion

USCIS Form 1 and the creation of i-accounts assume that all users or USCIS customers are at the beginning stage of an employment- or family-based immigration process and that they will complete all applications from that starting point though the naturalization phase. This is a very flawed assumption that collects information not needed by USCIS and places significant burdens on individuals seeking less or minimal USCIS services. In addition to creating a time-consuming and unnecessary process for applicants and petitioners, the length of USCIS Form 1 will strain the resources of charitable immigration legal service providers. By diverting resources to the completion of such forms, it will reduce the number of clients a charitable agency is able to serve. We strongly urge USCIS to reconsider its intent to require customers to create i-accounts via USCIS Form 1 and request that a paper application and petition filing option remain available without the creation of i-accounts.

CLINIC appreciates your consideration of these views.

Sincerely,



Donald Kerwin
Executive Director, CLINIC